IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

WP(C).No. 9652 of 2007(Y)

IA.541/07 & 542/07 IN OS.19/1977 of I ADDL.DISTRICT COURT, ERNAKULAM

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PETITIONERS:

1. VARKEY ITTAN, AGED 78, NEDUMKUZHIYIL, KUNNACKAL KARA, VALAKOM VILLAGE, MOOVATTUPUZHA TALUK.

2. O.P.PAUL, S/O.PAULOSE, AGED 60, ORAVANMANYIL HOUSE, KONNAKKAD P.O., MUVATTUPUZHA.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

1. KURUVILLA MATHAI, KATHANAR, AGED 30, RESIDING AT ELANGANAPATTATHIL, NELLAD KARA, KZHAUVANNOOR VILLAGE, KUNNATHUNADU TALUK, NELLAD P.O.

2. ITTAN PAULOSE KATHANAR, AGED 42, RESIDING AT NEDUMAZHIYIL, KUNNAKKAL KARA, VALAKOM VILLAGE, MOOVATTUPUZHA TALUK, KUNNACKAL P.O.

3. MATHAI PAILY, AGED ABOUT 50, RESIDING AT MANIYARICKAL, KUNNAKKAL KARA, VALAKOM VILLAGE, MOOVATTUPUZHA TALUK, KUNNACKAL P.O.

4. DEVID DAVID, AGED ABOUT 45, RESIDING AT VETTMATTATHIL, KUNNAKKAL KARA, VALAKOM VILLAGE, MOOVATTUPUZHA TALUK, KUNNACKAL P.O.

5. HIS GRACE PAULOSE MAR PHILOXINES METROPOLITAN, RESIDING AT BISHOP'S HOUSE, MOOVATTUPUZHA (DIED).

6. M.J.CHERIAN, S/O.OUSEPH, MANIYARIKKAL HOUSE, KONNAKKAL VALAKAM VILLAGE, MUVATTUPUZHA TALUK.

7. P.C.VARGHESE, S/O.CHACKO PUTHIYEDATH HOUSE, KUNNAKKAL, VALAKAM VILLAGE, MUVATTUPUZHA TALUK.

8. T.U.CHACKO, S/O.UTHUP, THAZHATHEDATH HOUSE, KUNNACKAL POST, KUNNACKAL KARA, VALAKOM VILLAGE, MUVATTUPUZHA TALUK.

9. P.V.GEORGE, S/O.VARGHESE,PAPALIL HOUSE, KUNNACKAL POST,KUNNACKAL KARA, VALAKOM VILLAGE, MUVATTUPUZHA TLK

10. BINU MATHAI, S/O.MATHAI, CHAVANATHUPUTHENPURA HOUSE, KUNNACKAL POST, KUNNACKAL KARA, VALAKOM VILLAGE, MUVATTUPUZHA TALUK.

11. ABRAHAM T.C., S/O.CHERIAN, THEVARMADATHIL HOUSE, KUNNACKAL POST, KUNNACKAL KARA, VALAKOM VILLAGE, MUVATTUPUZHA TALUK.

12. K.P.MATHAI S/O.PAULOSE, KAYYARICKAL, NELLAD POST, MUZHUVANNUR VILLAGE, KUNNATHUNAD TALUK.

13. GEORGEKUTTY KURIAKOSE,S/O.KURIAKOSE, MANIRICKAL HOUSE, KUNNACKAL POST, KUNNACKAL KARA, VALAKOM VILLAGE, MUVATTUPUZHA TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 9652 of 2007 Y

JUDGMENT

The petitioners are the plaintiffs in O.S. No.135/75 on the file of the Munsiff's Court, Muvattupuzha, which was later withdrawn and transferred to the I Additional District Court, Ernakulam and re-filed as O.S.No.19/77, being a Church dispute.

2. It is submitted that defendants 2 and 4 produced the file containing Kalpanas and Pothuyogam Diary before court as per the direction of the court, but those documents were not seen in the case records. The submission is that those records were being produced before the Munsiff's Court, Muvattupuzha and those records had not been transmitted to the I Additional District Court, Ernakulam, when the case was transferred. It is the further case of the petitioners that as the documents aforesaid were not traced out, they

produced certified copies of the relevant pages of the minutes book and also filed a petition to keep the same in safe custody and that at present those documents are also reported to be misplaced. The suit was decreed initially, but, it was remanded in appeal filed by respondents 8 to 13.

3. It is further submitted that though Exhibit P3 petition was filed by the petitioners to trace out the missing records and the court below directed the office to trace out the records, no useful purpose was served and that, therefore, they filed Exhibit P4 petition for re-construction of the documents and produced notorised copies of the documents, but, however, no orders have been passed on Exhibit P4 application. It is submitted that it is, in the above circumstances, that the petitioners had to file Exhibit P5 list of witnesses and Exhibit P6 petition to issue summons to those witnesses and Exhibit P7 petition to re-open the case for evidence. The court below,

however, permitted only one of the witnesses being examined, namely, Witness No.2, who is the Notary and did not allow Witness Nos.1 and 3 being examined. When the plaintiffs were put to embarrassment, being not able to prove their case, relying on the documents produced by them, it is not proper for the court below not to allow the witnesses being examined and also to have passed appropriate orders on Exhibit P4, when this Court had directed the case to be disposed of before 31.3.2007, as seen from Exhibit P8 order. In the circumstances, I am of the view that this writ petition deserves to be disposed of without notice to the respondents, so that the direction issued by this Court will not be nullified and no prejudice also will be caused to the respondents, considering the manner in which I am disposing of this writ petition.

4. It is seen from Exhibit P8 common order passed by the court below on 5.3.2007 on

I.A.No.541/07 and 542/07 in O.S.No.19/77 that the Pothuyogam Diary and the file containing Kalapanas, produced by defendants 3 and 4 as also the certified copies of the relevant pages of minutes book, produced by the plaintiffs, which were directed to be kept under safe custody, were found missing and the matter was already reported to this Court.

5. The Registry shall verify as to what is the action taken in the matter and shall place the matter before the Judge in charge of the District, so as to enable appropriate action being taken in the matter of locating the documents as also in the matter of taking appropriate action against the delinquent officers responsible for missing of the records and even the records kept under safe custody. The court below shall afford an opportunity to the petitioners to examine all the witnesses cited by them in Exhibit P5 witness list.

This writ petition is disposed of with the above directions. Issue certified copy of this judgment to the counsel for the petitioners on application as per Rules, as expeditiously as possible and also bring to the notice of the Registry the directions contained in paragraph 5 of this judgment.

21st March, 2007 (K.P.Balachandran, Judge)

tkv